

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

EDILBERTO MARTINEZ-ADORNO,

Defendant.

09-CR-387

Statement of Reasons Pursuant to  
18 U.S.C. § 3553(c)(2)

JACK B. WEINSTEIN, Senior United States District Judge:

A sentencing court shall “state in open court the reasons for its imposition of the particular sentence.” 18 U.S.C. § 3553(c). If the sentence is not of the kind prescribed by, or is outside the range of, the sentencing guidelines referred to in section 3553(a)(4), the court shall indicate the specific reasons for imposing a sentence different from the guidelines. 18 U.S.C. § 3553(c)(2). These “reasons must also be stated with specificity in the written order of judgment and commitment.” *Id.* Even though the mandatory nature of the guidelines has been excised and they are now “advisory,” see *United States v. Booker*, 543 U.S. 220, 245-46 (2005), the sentencing court must still adhere to the requirements of 18 U.S.C. § 3553(c)(2). *United States v. Jones*, 460 F.3d 191, 197 (2d Cir. 2006).

The sentencing court’s written statement of reasons shall be “a simple, fact-specific statement explaining why the guidelines range did not account for a specific factor or factors under § 3553(a).” *United States v. Rattoballi*, 452 F.3d 127, 138 (2d Cir. 2006). Such a statement should demonstrate that the court “considered the parties’ arguments and that it has a reasoned basis for exercising its own legal decisionmaking authority.” *United States v. Cavera*, 550 F.3d 180, 193 (2d Cir. 2008) (quoting *Rita v. United States*, 551 U.S. 338, 356 (2007)) (internal quotations and alterations omitted). Although a written statement of reasons pursuant to

18 U.S.C. § 3553(c)(2) is not necessary when the court imposes a guidelines sentence, the statement may nevertheless assist the reviewing court and the United States Sentencing Commission in understanding the reasons for the court's sentence.

On July 29, 2009, Edilberto Martinez-Adorno pled guilty to a single-count indictment, which charged that on September 24, 2008, Martinez-Adorno, an alien who had previously been deported from the United States after a conviction for the commission of an aggravated felony, was found in the United States, without the Secretary of the United States Department of Homeland Security having expressly consented to such alien's applying for admission, in violation of 8 U.S.C. § 1326(a).

Martinez-Adorno was sentenced on February 23, 2010. The proceeding was videotaped in order to develop an accurate record of the courtroom atmosphere and the factors and considerations that a district court must evaluate in imposing a sentence under 18 U.S.C. § 3553(a). *See In re Sentencing*, 219 F.R.D. 262, 264-65 (E.D.N.Y. 2004) (utility on appeal).

The court finds the total offense level to be 13 and defendant's criminal history category to be category III, yielding a guidelines range of imprisonment of between 18 and 24 months. The offense carried a maximum term of imprisonment of twenty years. 8 U.S.C. § 1326(b)(2). The guidelines range of fine was from \$3,000 to \$30,000.

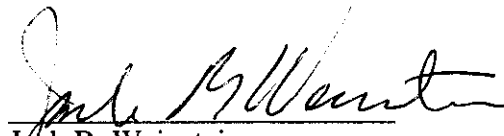
Martinez-Adorno was sentenced to 18 months' imprisonment and three years' supervised release. A \$100 special assessment was imposed. No fine was imposed because the defendant does not, and will not in the future, have assets to pay a fine.

Respectful consideration was given to the sentencing guidelines, the Sentencing Commission's policy statements and all other factors listed under 18 U.S.C. § 3553(a) to ensure that the sentence is "sufficient, but not greater than necessary, to comply with the purposes" of

sentencing. 18 U.S.C. § 3553(a). A sentence within the guidelines range is appropriate in this case. *See* 18 U.S.C. § 3553(a)(4)(A).

The court considered the “nature and circumstances of the offense and the history and characteristics of the defendant.” *See* 18 U.S.C. § 3553(a)(1). The offense of illegal re-entry is serious. Defendant is a recidivist offender. He has been deported on two prior occasions. He has two convictions for possession or attempted possession of forged documents. The arrest that led to the instant conviction resulted from defendant’s involvement in selling forged documents. Defendant is relatively young. He has attempted to provide some financial support for his mother in Mexico. A guidelines sentence of eighteen months reflects the seriousness of the offense and will promote respect for the law and provide just punishment. *See* 18 U.S.C. § 3553(a)(2)(A).

Under section 3553(a)(2)(B), there are two major considerations: specific and general deterrence. General deterrence is satisfied with the sentence imposed. The sentence will send a clear message that illegal re-entry into this country will result in a substantial prison sentence. Specific deterrence is achieved through incapacitation, the defendant’s likely deportation, and the impact of this conviction on the defendant’s employability. It is unlikely that he will engage in further criminal activity in light of his need to provide support for his mother in Mexico.

  
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Jack B. Weinstein  
Senior United States District Judge

Dated: February 24, 2010  
Brooklyn, New York